

# FEDERAL PROSECUTION: AN ALTERNATIVE REMEDY

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## *Making a Federal Case Against Domestic Violence*

United States Attorney's Office  
for the Western District of Texas

# Above the Clouds



# *What is the Violence Against Women Act (VAWA)?*

- *VAWA prohibits interstate travel with intent to commit domestic violence.*
- *VAWA prohibits interstate travel to violate a protection order.*
- *VAWA prohibits the possession or transfer of a firearm under certain circumstances.*
- *All VAWA offenses are felonies.*

# *Why Choose a Federal Remedy?*

- *PENALTIES: Applicable state penalty may not “fit the crime”.*
- *ABILITY TO GATHER EVIDENCE: Interstate crimes make it difficult for local agencies to obtain evidence.*
- *BOND: May be easier in federal court to hold defendant without bond.*
- *RULES OF EVIDENCE: Evidence may be excluded in state court.*

# *The Crimes*

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- *Interstate Domestic Violence*
- *Interstate Stalking*
- *Interstate Violation of Protective Order*
- *Firearm Offenses*
  - *people subject to protective orders*
  - *people convicted of domestic violence misdemeanors*



# *Interstate Domestic Violence: Violator Travels*

- *Travel with intent to injure, and then actually injure an “intimate partner.”*
- *It is a federal crime to cross a state line with intent to injure, harass or intimidate an “intimate partner”, and then intentionally commit a crime of violence which causes bodily injury to the intimate partner. 18 U.S.C. 2261(a)(1).*

# *Definition of “Intimate Partner”*

- *A spouse, a former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and*
- *Any other person similarly situated to a spouse who is protected by the domestic laws of the State in which the injury occurred or where the victim resides.*

# *Case Example: Interstate Travel to Commit Domestic Violence*

- *1997: Woman and her cousin traveled from NJ to New York to murder estranged husband. Husband was cut up into many pieces, and parts thrown into local river. Woman sentenced to life without parole.*
- *1998: Man convicted for carjacking a car in North Carolina, traveling to Virginia, blasting his way into his ex-girlfriend's house, chasing her outside, and shooting and killing her. Man sentenced to death.*



# *Interstate Domestic Violence: Violator Causes Other to Travel*

- *Forces or coerces victim to travel, then injures the victim.*
- *It is a federal crime to cause “intimate partner” to cross a state line by force, coercion, duress or fraud, and in the course or as a result of that conduct, intentionally cause bodily injury to the intimate partner. 18 U.S.C. 2261(a)(2).*

# *Case Example: Causing Another to Travel to Commit Violence*

- *1998: Man used gun to kidnap ex-girlfriend, and take her from N. Carolina to Virginia and back. During ordeal, victim was handcuffed, tied-up, raped, and finally released after agreeing to move back in with him. Man sentenced to 228 months imprisonment.*
- *1995: Man beat his wife in their home in W. Virginia, put her in trunk of car. With her in the trunk, he traveled between W.V. and Kentucky for next few days. By the time he was caught, wife suffered permanent injuries and is in vegetative state. Man sentenced to life on kidnaping charge and 20 years on VAWA count.*

# *Interstate Stalking*

- *Travel with intent to stalk, and place victim in fear of death or serious injury.*
- *It is a federal crime to cross a state line with the intent to injure or harass another person, and in the course of, or as result of such travel, place that person (or member of that person's immediate family) in reasonable fear of death or serious bodily injury. 18 U.S.C. 2261A*

# *Definition of “Immediate Family”*

- *Spouse, parent, brother or sister, child or person to whom the person stands in “loco parentis”; or*
- *any other person living in the person’s household and related to the person by blood or marriage. 18 U.S.C. 115.*

# *Case Example: Interstate Stalking*

- *1997: Man assaulted victim years ago in Alaska. He tracked down victim in New York, traveled there, and had threatening notes delivered to her. Both defendant and victim are deaf mutes. He's under indictment, and undergoing competency exam.*
- *1997: Man traveled from N. Carolina to Maryland to follow ex-girlfriend after making numerous harassing phone calls. He hid in the bushes outside the victim's house, where police found gasoline poured on the front porch and bushes. He's been indicted and it's pending.*

# *Interstate Violation of Protective Order: Violator Travels*

- *Travel with intent to violate protective order, then actually violate the order.*
- *It is a federal crime to cross a state line with the intent to engage in conduct that violates a protective order, and then engages in such conduct.  
18 U.S.C. 2262(a)(1).*



# *Interstate Violation of Protective Order: Causes Another to Travel*

- ***Forces victim to travel, then violates a protective order by injuring victim.***
- ***It is a federal crime to cause an “intimate partner” to cross a state line by force, coercion, duress or fraud, and in the course or as a result of that conduct, intentionally injures intimate partner in violation of a protective order. 18 U.S.C. 2262(a)(2).***

# *Case Example: Interstate Violations of Protective Orders*

- *2261(a)(1): Man dated victim for 2 1/2 weeks. When she broke off relationship, he began pattern of harassing behavior. She obtained protection order in Massachusetts. After victim moved to N.Y., man followed her and continued harassment. Man sentenced to 37 months imprisonment.*
- *2261(a)(2): Man separated from wife, assaulted her, forcibly took her from Indian country, raped her, and then returned her to Indian country. Man sentenced to 262 months imprisonment.*

# *“Protection Order” Definitions*

- *Different statutory requirements for different situations:*
  - *Offenses involving interstate violation of protection orders:  
18 U.S.C. 2262(a)(1)(A) & 2266.*
  - *Firearm offenses: 18 U.S.C. 922(g)(8).*
  - *Full, faith and credit: 18 U.S.C. 2265.*

# *Protection Order Requirements: Interstate Travel Violations*

- *Person must violate portion of order that protects against “credible threats of violence, repeated harassment, or bodily injury to the person(s) for whom the protection order was issued.”*
- *Includes orders issued by civil and criminal courts (but not support or child custody orders).*

# *Firearm Offenses*

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- *Firearms and protective orders:  
18 U.S.C. 922(g)(8).*
- *Firearms and domestic violence  
misdemeanors:  
18 U.S.C. 922(g)(9).*

# *Firearms and Protective Orders*

- *It is a federal crime to possess a firearm and/or ammunition while subject to a valid, qualifying protective order.  
18 U.S.C. 922(g)(8).*
- *Law enforcement officers are exempt from this law.*



# *Protective Order Requirements: Firearm Cases*

- *Issued after hearing of which defendant had actual notice and opportunity to participate;*
  - *Restrains person from (1) harassing, stalking, or threatening intimate partner or child, or (2) conduct that places the intimate partner or child in fear of bodily injury;*
  - *Includes:*
    - *specific finding that defendant poses a credible threat to physical safety of victim, or*
    - *explicit prohibition against any force (actual or threatened) that would cause injury to victim.*
- 18 U.S.C. 922(g)(8).*

# *Case Example:*

## *Firearm and Protection Order*

- *1997: Estranged wife obtained protective order in W. Virginia. Man lulled her to his house, and threatened to kill her and their son with his gun. Man sentenced to 33 months imprisonment.*
- *1997: Order issued against man. He later saw his ex-girlfriend in a bar, and came with his gun into the bar looking for her. He was later found with three guns. Man sentenced to 21 months imprisonment.*
- *1997: Man purchased a firearm after issuance of court order at his initial appearance on arrest for domestic assault. Man sentenced to 95 months, after upward departure based upon history of domestic abuse.*

# *Firearms and Domestic Violence Misdemeanors:*

- *It is a federal crime to possess a firearm after conviction of a qualifying state misdemeanor crime of domestic violence. 18 U.S.C. 922(g)(9).*
- *This statute applies to law enforcement personnel.*

# *Definition of “Misdemeanor Crime of Domestic Violence”*

- *Misdemeanor under federal or state law.*
- *Misdemeanor has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon.*
- *Misdemeanor was committed by a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, or by a current or former cohabitant with the victim as a spouse, parent, or guardian. 18 U.S.C. 921(a)(33).*

# *Other 922(g)(9) Restrictions*

- *Date of conviction must precede firearm possession.*
- *Due process requirements were met (right to counsel and jury trial).*
- *Does not apply if prior conviction was expunged, set aside or pardoned unless pardon or other relief expressly contained prohibition against firearm possession. 18 U.S.C. 921(a)(33).*

# *Case Example: Firearm and Domestic Violence Misdemeanor*

- *1994: Man convicted for assaulting his soon-to-be wife.*
- *1996: Man shot his wife with .380 caliber pistol.*
- *1997: Man sentenced to 51 months.*



# *Transfer of Firearms*

- *It is also a federal crime for a person to transfer a firearm to another if the person knows or has reasonable cause to believe that the other is subject to valid restraining order, or has been convicted of a qualifying misdemeanor crime of domestic violence.  
18 U.S.C. 922(d)(8) & (d)(9).*

# Penalties

- *Interstate Domestic Violence, Stalking and Protective Order offenses (Sections 2262, 2262A and 2262):*
  - *Statute: maximum 5 yrs. to life, depending on seriousness of bodily injury.*
  - *Guidelines: approx. 2 + years (if physical injury, possibly much higher).*
- *Firearm Offenses:*
  - *Statute: maximum 10 yrs. imprisonment.*
  - *Guidelines: approx. 2 + years.*

# *Other Relevant Statutes*

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- *Pre-Trial Detention -- 18 U.S.C. 2263.*
- *Restitution -- 18 U.S.C. 2264.*
- *Full Faith and Credit -- 18 U.S.C. 2265.*
- *Self-Petitioning for Battered Immigrant Spouses and Children -- 8 U.S.C. 1154.*

# *Full Faith and Credit*

- *Protection orders issued by the court of one State or Indian tribe shall be accorded full faith and credit by the court of another State, and enforced as if it were the order of the enforcing State. 18 U.S.C. 2265.*
- *Order was issued by court with proper jurisdiction, and due process requirements met (notice and opportunity to be heard). If ex parte order, notice and opportunity to be heard governed by state law.*
- *Order was issued to prevent violent or threatening acts, harassment, contact with, or proximity to another person.*

# *Summary of VAWA*

## ■ *Interstate travel*

- *with intent to injure another and injures*
- *by another which is forced and injures*
- *with intent to stalk*
- *with intent to violate protection order*
- *by another which is forced and injures in violation of order*

## ■ *Possession/transfer of firearm after conviction/restraining order*

## ■ *Full faith and credit*

# *Challenges . . .*

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- *definition of “valid protection order”*
- *definition of “qualifying misdemeanor crime of domestic violence”*
- *lack of awareness*
- *“state vs. federal”*



# *Solutions . . .*

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- *proposed legislation*
- *familiarity with VAWA*
- *analyzing/revising protection orders*
- *working as a team*

# *Questions about VAWA?*

- State/Tribal laws & filing protection orders
  - contact local prosecutor's office & court
- Possession of gun after conviction/subject to protection order
  - contact Bureau of Alcohol, Tobacco & Firearms
  - San Antonio: 210-805-2727
- Interstate domestic violence
  - contact Federal Bureau of Investigation
  - San Antonio: 210-225-6741
- VAWA legal questions or litigative concerns
  - contact U.S. Attorney's Office VAWA point of contact
  - WDTX: Mike McCrum, AUSA 210-384-7150
- Public awareness & general information on VAWA
  - contact the U.S. Attorney's Office
  - WDTX: 210-384-7100

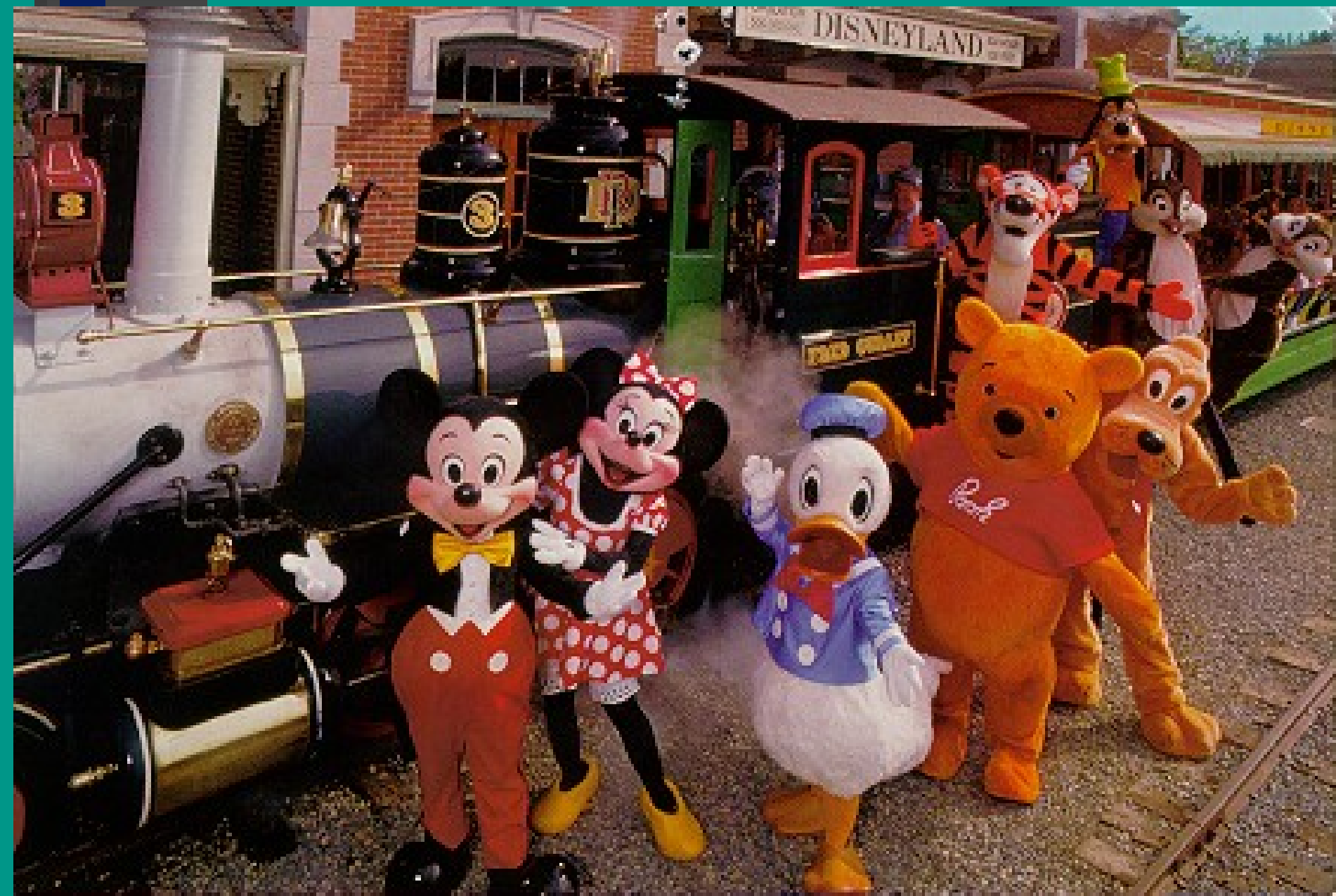
# *Prosecution Policies in Texas*

- *USAO will consider a variety of factors in deciding whether to prosecute, including*
  - *the aggravated nature of the conduct,*
  - *the inability to obtain an adequate remedy in state court, and*
  - *factors indicating federal prosecution is clearly advantageous (i.e., need for pre-trial detention, multi-state investigation, penalties).*
- *If state remedy is inadequate, call the USAO Point of Contact and/or the FBI or ATF office.*

# *U.S. Attorney VAWA*

## *Points of Contact*

- *Western District of Texas (San Antonio, Austin, Waco, Midland, El Paso, Del Rio):  
Mike McCrum, AUSA, 210-384-7150*
- *Southern District of Texas (Houston, Victoria, Corpus Christi, Brownsville, McAllen, Laredo):  
Juliette LaChapelle, AUSA, 713-567-9000*
- *Eastern District of Texas (Beaumont, Tyler, Sherman, Plano, Lufkin):  
Tracey Batson, AUSA, 409-839-2538*
- *Northern District of Texas (Dallas/Ft. Worth, Lubbock, Amarillo, Abilene):  
Chris Stokes, AUSA, 214-659-8676*



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